

Summary of DHHS Response to State Auditor of Public Accounts' (APA) Review of Child Welfare Reform Contract Expenditure

1. **Child Welfare Costs have Increased Significantly**
 - DHHS acknowledges the amount of money devoted to child welfare has increased. This investment of additional funds has been to maintain the integrity of the system. DHHS believes the amounts being paid to the Lead Contractors are necessary and reasonable.
 - Decisions made by DHHS regarding the best approach for providing child welfare services are within the agency's management authority. Portions of the APA report appear to scrutinize management decisions rather than fiscal accountability.
 - Lead Contractors are required under the contract to submit monthly financial statements for DHHS' review. DHHS has implemented additional oversight functions related to review of financial records of the Lead Contractors and DHHS will continue to review and enhance its procedures and internal controls to adequately monitor the finances of the Lead Contractors.
2. **Request of Qualification Responses Were Not Adequately Evaluated**
 - DHHS has implemented additional oversight functions to review financial records of Lead Contractors.
 - DHHS disagrees with the APA's assessment of the contract selection process and view this as a difference with our management decision rather than a finding related to fiscal accountability. DHHS used the best information it had at the time and each of the agencies selected had a sufficient business history to indicate its ability to handle the contract.
3. **Visinet's Financial Records Were Not Obtained After Termination**
 - DHHS disagrees with the APA's assessment. DHHS obtained all Visinet records which were made available to DHHS and which were determined to be useful to DHHS. At the time that Visinet ceased operations in April 2010, it immediately transferred to DHHS its case files for all existing cases in which services were being provided under the contracts.
 - Of the hundreds of boxes made available to DHHS, the vast majority contained records unrelated to DHHS service delivery and coordination contracts. Other boxes contained information duplicative to DHHS paper and electronic records. DHHS determined that it was not necessary to take possession of and assume responsibility for these files. DHHS did take possession of boxes containing financial information and foster parent licensing records. DHHS reasonably complied with its duty under HIPAA to require Visinet, a business associate, to safeguard protected health information.

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4. Visinet's Settlement Agreement Lacks Documentation

- DHHS disagrees with the APA's assessment. The amounts paid to Visinet or on Visinet's behalf to employees, foster families, and subcontractors were within the amount allowed under the contract. DHHS has lawful authority to settle contract disputes. The amount DHHS agreed to pay and Visinet agreed to accept in satisfaction of the contract was negotiated based on the unique circumstances existing at the time the contract was terminated.
- DHHS considered a number of factors including the potential cost of substitute performance; payment of subcontractors, employees, and foster families; and the uncertainty of bankruptcy court treatment of the executory contract. In determining the amount owed to subcontractors, employees, and foster families, DHHS relied on the best information available at the time. However, the amount Visinet owed to others was not the basis for the settlement. The reason for the settlement was to resolve the amount due Visinet for services rendered prior to the termination of the contract.

5. BGH Contracts Not Settled in a Timely Manner

- DHHS has worked diligently to resolve remaining Boys and Girls Home, Inc. contract issues. Efforts to resolve these issues began immediately after BGH ceased operations as a Lead Contractor.
- It is important to DHHS that Boys and Girls Home (BGH) subcontractors receive payment to the maximum extent possible for services provided to children and families. Because DHHS lacks legal authority to unilaterally distribute the remaining funds payable under the contract directly to BGH subcontractors, and because the amounts owed by BGH to its subcontractors exceed the amount of contract funds available, distribution of contract funds to the subcontractors cannot occur absent an agreement by all parties concerned. Recently DHHS provided a draft settlement agreement to BGH and its subcontractors for review and comment. DHHS remains committed to achieving a satisfactory resolution of these issues.

6. Lead Contractor Records Were Not Reconciled to N-FOCUS

- Direct payments are no longer made to the Family Matters Contractors through N-FOCUS.
- CFS continues to track authorized services delivered by Families Matters and their subcontractors. There is a need and CFS will be implementing processes and procedures to address the accuracy and timeliness of service delivery information submitted to the Department.

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7. Overpayments and Duplicate Claims Paid

- As of January 2011, payments to Families Matter contractors are no longer made through N-FOCUS. The issues identified in the Attestation have been addressed.
- CFS continues to track authorized services delivered by Families Matters and their subcontractors. There is a need and CFS will be implementing processes and procedures to address the accuracy and timeliness of service delivery information submitted to the Department.

8. Claims Testing

- CFS continues to track authorized services delivered by Families Matters and their subcontractors. There is a need for and CFS will be implementing processes and procedures to address the accuracy and timeliness of service delivery information submitted to the Department.
- Oversight by Children and Family Outcome Monitors and Quality Assurance Reviews as well as supervisory reviews includes a review of information that needs to be entered into the State's data system (N-FOCUS).

9. Rate Variances Among the Lead Contractors

- DHHS has obtained rate information from KVC and NFC as recommended by the APA.
- DHHS disagrees with any inference that the rates paid to Lead Contractors were unreasonable. Rates did vary between contractors. That was expected because of variations between rural and urban areas, supply and demand and competition.

10. Contractor Overpayments and Underpayments

- DHHS disagrees with the APA's assessment; contractors were not overpaid or underpaid. It is also not accurate to portray the sums paid under the Visinet settlement agreement as additional compensation or an assumption of Visinet's debts.
- The amount DHHS agreed to pay and Visinet agreed to accept in satisfaction of the contract was negotiated based on the unique circumstances existing at the time the contract was terminated. The amount paid was within the amount allowed under the contract. The agreement avoided litigation without admitting liability and insured that foster families and subcontractors received some funds rather than paying the amount directly to Visinet.
- Boys & Girls Home ceased performance early and amounts identified as underpayments to BGH in the comments represent amounts withheld by DHHS while settlement negotiations are being conducted.

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- The current contracts with KVC and NFC were amended to begin paying fixed amounts twice per month and to reconcile the amounts due through the end of December, 2010. The contracts contain specific provisions for calculating the amounts due upon early termination.

11. Information Not Provided

- In retrospect, DHHS realizes the process in place to respond to the APA's requests was not as effective as it could have been. DHHS' intention is always to cooperate fully with APA audits. In the future, DHHS will revise its processing of APA requests. We offer to work with the APA to design an improved process and trust that it will be mutually beneficial.
- DHHS takes exception to the characterization of its response to the APA as circumventing the law or violating the spirit or intent of the law. DHHS acted in good faith in responding to APA requests, and spent many hours in researching and responding to APA requests. The process may have been hindered by inadequate communication between DHHS and the APA and the APA's expectations about the nature and extent of documentation supporting decisions such as the level of lead contractor compensation and settlement agreements.

12. Review and Payment of Subcontractors and Foster Parents

- CFS will be implementing processes and procedures to address the accuracy and timeliness of Contractors payments to subcontractors and foster parents.

13. Competitive Bidding Requirements

- DHHS disagrees with the APA's assessment. The exceptions to competitive bidding contained within Neb. Rev. Stat. §73-507(2)(e) provide flexibility to state agencies when contracting for services in situations where the quality of the service is critical. All of the services provided under the contract are child welfare services provided directly to individuals. Because the Lead Contractors are equally responsible for services provided by themselves or by a subcontractor, the identity of the actual provider of the service is irrelevant to the applicability of statutory competitive bidding requirements.
- Although DHHS had legal authority to award contracts without any competitive process, it elected to issue a Request for Qualifications, thereby allowing all interested bidders to compete for a contract. This process was very public and many organizations competed for the contracts, both individually and in groups. DHHS used the information gathered during the RFQ process to determine which organizations were awarded a contract.

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14. Lack of Support for Determination of Initial Service Contract Amounts

- DHHS agrees that funding in relation to the amount DHHS collected in child support for child welfare cases should have been considered in the initial funding of contracts.
- DHHS disagrees with any inference that there was not supportive documentation to determine the initial contract amounts. Copies of worksheets used in the contract negotiation process were provided to the APA.
- The Department acted in good faith throughout the negotiation process

15. Contract Transition Percentages Not Met

- While contract transition percentages were not met, we disagree with the APAs assessment. Plans were adjusted with discussion, involvement and agreement between the Department and contractors. The technical issue is that the agreement wasn't recorded as a contract amendment.
- Even with adjustments to the transition plans, the Department was able to meet its obligations within the budget.

16. Access to System Not Removed Timely for Terminated Employees

- DHHS is and will continue to review procedures with the Lead Contractors and implement any necessary changes.

17. Approval of Subcontractor

- The contracts are designed to place initial responsibility on the Lead Contractors to ensure that all subcontractors comply with all requirements of the contract and applicable laws. Due to the large number of subcontractors that would need to be reviewed on a continuous basis, it is not feasible for DHHS to make an exhaustive review of each subcontractor.
- DHHS will implement a system of periodic, random reviews of the financial status and performance of DHHS contractors and subcontractors of lead contractors. If DHHS receives credible concerns about a specific provider, the matter will be reviewed and appropriate actions will be taken.